

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

recounted that he was in his vehicle on the street when he picked up a parcel, twisted his body, and “pulled” his lower back. Appellant stopped work on December 16, 2015.

Appellant submitted an accident report and record notification from the employing establishment. It indicated that at 10:49 a.m. on December 16, 2015 appellant sprained his lower back when he picked up a parcel in his truck and twisted his body.

The employing establishment provided an authorization for examination and/or treatment (Form CA-16) dated December 16, 2015.

In an attending physician’s report (Form CA-20) dated December 16, 2015, Raquel Knutson, a certified physician assistant, indicated that appellant felt a pull in his lower back when he lifted a package at work. She noted that appellant had a preexisting low back injury from 2014. Ms. Knutson diagnosed lumbosacral strain and muscle sprain. She checked a box marked “yes” indicating that the condition was caused or aggravated by the above-described employment activity. Ms. Knutson authorized appellant to resume modified duty on December 17, 2015. She also provided a duty status report (Form CA-17) of the same date which provided work restrictions.

Appellant submitted a First Report of Occupational Injury or Illness Form dated December 16, 2015 by Dr. Tiffany L. Shay Alexander, Board-certified in preventive medicine. She noted that appellant worked as a letter carrier and described that around 10:00 a.m. on December 16, 2015 appellant was inside his truck and bent down to pick up a package on the floor when he felt a pull in his left lower back. Dr. Alexander related that appellant currently complained of muscle tightness and pain in his left low back radiating to the left lateral thigh. She reviewed appellant’s history and noted that he had a lumbar strain the prior year, which had completely resolved. Upon physical examination of appellant’s lumbar spine, Dr. Alexander observed tenderness to palpation in bilateral lumbar paraspinals, L3-L5. Range of motion testing showed flexion to 70 degrees, extension to 10 degrees, rotation to 20 degrees bilaterally, and lateral side bending bilaterally to 25 degrees. Straight leg raise testing was positive bilaterally at 50 degrees. Dr. Alexander diagnosed lumbosacral strain and lumbar paraspinal muscle spasm. She reported that appellant could return to modified duty on December 17, 2015 with restrictions of lifting, pulling up to 10 pounds, sitting, standing, or walking up to six to eight hours, climbing up to one hour, carrying, pushing, or pulling up to six to eight hours, and no kneeling, bending, stooping, or twisting. Dr. Alexander provided a Form CA-17 which outlined appellant’s work restrictions.

On December 16, 2015 appellant underwent a lumbar spine x-ray examination by Dr. Barry Lumkin, a Board-certified diagnostic radiologist, who reported mild levocurvature without acute findings and mild lower lumbar facet arthrosis of the lumbar spine.

By letter dated January 6, 2016, OWCP advised appellant that his claim was initially accepted as a minor injury, but was now being formally considered because he had not yet returned to work. It requested that he respond to an attached development questionnaire in order to substantiate the factual elements of his claim. Appellant was also requested to provide additional medical evidence to establish that he sustained a diagnosed condition as a result of the alleged employment incident. He was afforded 30 days to submit the necessary evidence.

Appellant continued to receive treatment from Dr. Alexander. In reports dated December 29, 2015 to January 27, 2016, Dr. Alexander related that appellant's condition had improved, but he still complained of pain across the lower back radiating to his posterior thighs. She reviewed appellant's history and conducted an examination of appellant's lower back. Dr. Alexander reported tenderness to palpation midline in the area of L3-L5 and in the bilateral lumbar paravertebral musculature at the area of L5. She noted slightly restricted range of motion and intact sensation to both lower extremities. Straight leg raise testing was negative bilaterally. Dr. Alexander diagnosed lumbar strain and lumbar paraspinal muscle spasm. She recommended that appellant continue with his current work restrictions and provided duty status reports which outlined appellant's restrictions.

On January 29, 2016 appellant accepted a job offer as a modified city carrier. The duties of his assignment included casing mail, delivering express mail, and working the pick-up window for two to three hours. The physical requirements of the position required standing and walking for two to three hours.

By decision dated February 9, 2016, OWCP denied appellant's claim. It accepted that the December 16, 2015 incident occurred as alleged and that a back condition had been diagnosed, but it denied the claim because the medical evidence submitted failed to establish causal relationship between the diagnosed medical condition and the accepted employment incident.

On March 21, 2016 appellant requested reconsideration. He indicated that he spoke with his physician who informed him that all necessary documentation was sent to OWCP. Appellant noted that he was attaching an updated First Report of Occupational Injury or Illness Form and medical reports from his previous injury.

OWCP also received appellant's response to its development questionnaire. Appellant indicated that on December 16, 2015 he was delivering mail on his route and had to drop off a medium size package weighing approximately 20 to 25 pounds. He related that when he lifted the package in his truck he felt a sharp pull in his lower back. Appellant noted that he previously had low back pain due to diagnosed lumbar facet arthropathy.

Appellant submitted an amended December 16, 2015 First Report of Occupational Injury or Illness Form by Dr. Alexander. Dr. Alexander noted that appellant worked as a letter carrier and described that on December 16, 2015 he felt a pull in his left lower back when he twisted to pick up a package on the floor to be delivered. She provided examination findings and diagnosed lumbosacral strain and lumbar paraspinal muscle spasm. Dr. Alexander checked a box marked "yes" indicating that her findings and diagnosis were consistent with appellant's account of injury. She recommended that appellant return to modified duty on December 17, 2015.

In a February 24, 2016 report, Dr. Alexander indicated that appellant was evaluated for follow-up evaluation of a lower back injury that occurred on December 16, 2015. She related that appellant still complained of intermittent pain in his lower back radiating down to his bilateral hamstrings. Dr. Alexander noted that appellant had worked modified duty for the past two weeks and appeared to be tolerating his work without any significant discomfort. She reviewed appellant's history and conducted an examination. Dr. Alexander reported tenderness in the midline from L1-L5 and tenderness in the lower lumbar paravertebral musculature in appellant's

lumbar spine. She also noted mild restricted range of motion and intact sensation in the bilateral lower extremities. Straight leg raise testing was negative bilaterally. Dr. Alexander diagnosed lumbosacral strain and lumbar paraspinal muscle spasm. She recommended that appellant continue modified duty with his current work restrictions and provided a duty status report which outlined his work restrictions.

OWCP also received several other medical reports related to appellant's 2014 back injury. Appellant submitted progress notes dated March 18, 2014 to February 11, 2015 by Dr. Hai Tien Tran, an osteopath, and Dr. James Youn, a Board-certified family practitioner, regarding treatment for chronic low back pain. He was diagnosed with arthropathy of lumbar facet. Appellant also provided a May 6, 2014 lumbar spine magnetic resonance imaging (MRI) scan report by Dr. Scott Rice, a Board-certified diagnostic radiologist, who noted diminished disc signal with moderate disc protrusion at L4-L5 and small right central disc protrusion at L5-S1.

By decision dated June 16, 2016, OWCP denied modification of the February 9, 2016 decision. It found that the medical evidence of record was insufficient to establish that appellant's lumbar condition was causally related to the December 16, 2015 employment incident. OWCP noted that Dr. Alexander's reports did not contain a well-rationalized medical opinion explaining how appellant's current lumbar condition resulted from the December 16, 2015 employment incident.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

To determine if a claimant sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury.<sup>5</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>9</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>10</sup>

### ANALYSIS

Appellant alleged that on December 16, 2015 he strained his lower back when he picked up a parcel and twisted his body at work. OWCP accepted that the December 16, 2015 employment incident occurred as alleged and that he was diagnosed with a lumbar condition. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his diagnosed lumbar condition was causally related to the accepted employment incident. The Board finds that appellant failed to meet his burden of proof to establish causal relationship.

Appellant was treated by Dr. Alexander. In a First Report of Occupational Injury or Illness Form dated December 16, 2015, she related that on December 16, 2015 appellant bent down to pick up a package on the floor and felt a pull in his left lower back. Dr. Alexander reviewed appellant's history and noted that he had a lumbar strain the year prior. Upon physical examination of appellant's lumbar spine, she observed tenderness to palpation in bilateral lumbar paraspinals, L3-L5. Straight leg raise testing was positive bilaterally at 50 degrees. Dr. Alexander diagnosed lumbosacral strain and lumbar paraspinal muscle spasm. She recommended that appellant return to modified duty on December 17, 2015. In an amended form received on March 18, 2016, Dr. Alexander checked a box marked "yes" indicating that her findings and diagnosis were consistent with appellant's account of injury. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>11</sup>

Dr. Alexander continued to treat appellant and provided subsequent reports dated December 29, 2015 to February 24, 2016. She described the December 16, 2015 employment

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<sup>7</sup> *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>11</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

incident and noted appellant's continued complaints of lower back pain radiating to his posterior thighs. Dr. Alexander provided examination findings and diagnosed lumbar strain and lumbar paraspinal muscle spasm. She recommended that appellant continue with his current work restrictions and provided duty status reports which outlined appellant's restrictions. Although Dr. Alexander accurately described the December 16, 2015 employment incident and diagnosed a back condition based on physical examination, she did not provide an affirmative opinion explaining that the described employment incident resulted in the diagnosed medical condition. The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.<sup>12</sup> Because Dr. Alexander did not provide a reasoned opinion explaining how the December 16, 2015 employment incident caused or contributed to appellant's lumbar condition, this report is insufficient to establish appellant's claim. The need for rationalized medical opinion evidence is particularly important in this case since appellant had a preexisting back injury in 2014.<sup>13</sup>

The December 16, 2015 lumbar spine x-ray examination report by Dr. Lumkin is also insufficient to establish appellant's claim. Although he noted diagnoses of mild levocurvature without acute findings and mild lower lumbar facet arthrosis of the lumbar spine, he did not provide any opinion on the cause of appellant's diagnosed condition. The Board has held that diagnostic reports that do not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>14</sup>

The December 16, 2015 attending physician's report by Ms. Knutson, a physician assistant, also fails to establish appellant's claim because evidence from a physician assistant or nurse does not constitute competent medical evidence under FECA as neither are considered physicians as defined under section 8102(2) of FECA.<sup>15</sup>

In order to obtain benefits under FECA an employee has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence.<sup>16</sup> Because appellant has failed to provide such evidence demonstrating that his lumbar condition was causally related to the December 16, 2015 employment incident, he has not met his burden of proof.

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<sup>12</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>13</sup> *See supra* note 10.

<sup>14</sup> *See A.B.*, Docket No. 17-0301 (issued May 19, 2017).

<sup>15</sup> 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (nurses); *Allen C. Hundley*, 53 ECAB 551, 554 (2002) (physician assistant).

<sup>16</sup> *Supra* note 3.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his diagnosed lumbar condition is causally related to the accepted December 16, 2015 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 25, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board